MCI Statements in FCC Dockets and Related Court Proceedings Establishing That MCI Sought Authority Only To Provide Private Line Services

Docket Nos. 16509-16519[•]

"64. MCI proposes to furnish essentially the same type of service as that of *private* microwave systems, with the basic difference that MCI would render the service on a common carrier basis. MCI would install the basic microwave system on its route ('the pipe') and allow its customers to use parts of its [MCI Ex. 1]." MCI Proposed Findings of Fact and Conclusions of Law, F.C.C. Docket Nos. 16509-16519 (July 28, 1967), p. 27. (Emphasis added.)

"458. MCI will *not provide a toll exchange telephone service* or a message telegraph service. MCI will provide only microwave channels to be used only for interoffice and interplant communication [MCI Ex. 1, Tariff No. 1, p. 4]." *Id.* at 148. (Emphasis added.)

"6. MCI emphasizes that it is *not seeking to become a public telephone exchange company* or a public message telegraph company. . . ." *Id.* at 196. (Emphasis added.)

"7. *MCI would not offer public telephone exchange services, that is, MCI customers would not use MCI facilities to call any member of the general public. . . .*" *Id.* at 197. (Emphasis added.)

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"6 . . . . the basic MCI and existing carrier systems are different. The existing carriers have large plants originally dedicated to and designed for general telephone exchange service or message telegraph service. MCI will not operate in these services. . . ." MCI

[•] In Re Microwave Communications, Inc., 18 F.C.C.2d 953 (1969) *reconsideration denied*, 21 F.C.C.2d 190 (1970).

Reply Brief, F.C.C. Docket Nos. 16509-16519 (January 15, 1968), p. 4.

"37. The latent need for service in these sub-markets has little relation to present private line services and *no relation to present telephone* and telegraph *services* since all those who use MCI's special services will still use Bell for telephone and Western Union for telegraph. . . ." *Id.* at 19. (Emphasis added.)

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"1. . . . The Commission granted MCI's applications for a wholly new concept of non-telephone service which is best described as private, intra-firm customized communications channels . . . . *This is not a telephone exchange service.* . . ." MCI Opposition to Petitions for Reconsideration, F.C.C. Docket Nos. 16509-16519 (October 7, 1969), pp. 1-2. (Emphasis added.)

"26. . . . *MCI is not offering a public switched telephone service. It cannot and will not have any effect on the public switched telephone network* . . . ." *Id.* at 14. (Emphasis added.)

"28. . . . MCI is offering communication channels not obtainable from Bell. . . ." *Id.* at 14.

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". . . It has not proposed a new type of service; that is, *it has not proposed to enter the telephone exchange service,* the telegraph business, the cable business, or any service other than the originally conceived *MCI* service." MCI's Opposition to Petitions to Deny,* F.C.C. Docket Nos. 16509-16519 (May 22, 1970), p. 5. (Emphasis added.)

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* In Re Application of Microwave Communications, Inc. for Modification of Construction Permits, 27 F.C.C.2d 380 (1971).

Docket No. 18920[*]

". . . MCI-type applicants propose to *offer only customized point-to-point services* and have no intention of attempting to compete with Bell in *providing local exchange or long distance toll telephone service,* which account for the bulk of Bell's revenues. All of *these are conventional telephone switched voice services, and none of the MCI-type carriers propose such service.* . . ." MCI Comments, F.C.C. Docket No. 18920 (October 1, 1970), pp. 27-28. (Emphasis added.)

". . . The exchange services offered by the telephone company are not similar in any way to the services which the Specialized Common Carriers propose to provide. . . . *Specialized Common Carriers will provide only specialized point-to-point private line services.*" *Id.* at 102-03. (Emphasis added.)

"The telephone exchange market is not the market which MCI carriers will enter, however. These carriers will supply a widely diversified number and level of services *for individual customers between two or more points* between which they wish to transmit intelligence. *No switching between customers is involved* . . . ." *Id.* at 167-68. (Emphasis added.)

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"Furthermore, as is demonstrated elsewhere, we and the other applicants propose to serve a new submarket within the point-to-point communications market . . . . The 'cream' is in its switched voice services where it earns its highest returns—and which we do not seek to enter." MCI Reply Comments, F.C.C. Docket No. 18920 (December 2, 1970), p. 27.

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[*] Specialized Common Carrier Services, 29 F.C.C.2d 870 (1971), *reconsideration denied,* 31 F.C.C.2d 1106 (1971); *affirmed* Washington Utilities and Transportation Commission v. F.C.C. 513 F.2d 1142 (9th Cir. 1975), *cert. denied,* 44 U.S.L.W. 3206 (Oct. 1975).

"The Task Force (President's Task Force Report on Communications Policy) found 'it useful to distinguish between the public message telephone service, and leased line or private line service.' " Brief of MCI at p. 9 in *Washington Utilities Transportation Commission* v. *F.C.C.*, 513 F.2d 1142 (9th Cir. 1975). (Parenthetical phrase added.)

"The only point of direct competition with Bell would be in the area of private line services." Id. at 33. (Emphasis added.)

Docket No. 19896•

". . . FX and CCSA are merely two of the types of private line services which customers of the specialized carriers are entitled to avail themselves of when they choose to use specialized carrier facilities instead of going to AT&T for all their needs." MCI Brief, F.C.C. Docket No. 19896 (January 21, 1974), p. 40.

". . . *Docket No. 18920 dealt with private line services* —all of them—and the question of whether the business and data customers using Bell's and Western Union's various services would benefit from competition this limited corner of the overall common carrier communications market." *Id.* at 43. (Emphasis added.)

". . . Rather, *the discussion* (in Docket No. 18920) *was about the private line services generally*—sometimes referred to as business and data services—without specific reference to particular sub-classifications or configurations or terminals or any other restrictive nomenclature. In fact, in assessing the existing car-

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• Bell System Tariff Offering, 46 F.C.C.2d 413 (1974), *aff'd sub nom.* The Bell Telephone Company of Pennsylvania v. FCC, 503 F.2d 1250 (3rd Cir. 1974), *cert. denied,* 43 U.S.L.W. 2660 (June 16, 1975).

riers' claims of adverse impact from specialized carrier competition, the Commission discussed the possibility—which it labeled as extremely remote—that *all* of their private line revenues might be diverted to the new carriers. That must have meant, of course, that the Commission intended that the specialized carriers were to be allowed to compete for *all* of that business —including FX and CCSA." *Id.* at 43, 44. (Emphasis added.) (Parenthetical phrase added.)

". . . The Commission knew that if the new carriers were ever to become viable and offer innovative services they would *need to share the private line market* already being serviced by AT&T and Western Union. Since the Order discussed Bell's total private line market and revenues throughout, it is obvious that everyone was to be allowed to compete for every service—including FX and CCSA. *Id.* at 46. (Emphasis added.)

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". . . And all that is required to achieve the Commission's objective is that Bell comply with the Commission's directives in the *MCI* case and in Docket 18920 that all the existing carriers should provide interconnection to the new carriers for the *whole broad range of private line services.*" MCI Reply Brief, F.C.C. Docket No. 19896 (February 4, 1974), p. 5. (Emphasis added.)

". . . FX and CCSA together amount to $420 million of Bell's interstate private line business—a substantial market which it obviously wants to keep for itself, *despite the Commission's decision to authorize competition in the private line* field and the orders for interconnection it has issued to implement that decision." *Id.* at 9. (Emphasis added.)

". . . While the Commission concluded that it was feasible and desirable to have competing intercity systems

for *the provision of private line service to business and data users, no one proposed—or authorized—the new carriers to duplicate the telephone companies' local exchange networks.*" *Id.* at 10. (Emphasis added.)

"First, the FCC brief said that the FCC's *Specialized Carrier* decision '. . . *involves essentially private line offerings as distinguished from local telephone exchange and long distance toll telephone services.*'" *Id.* at 14. (Emphasis added.)

"The Commission knew that if the new carriers were ever to become viable and offer innovative services, they would need to share the private line markets already being serviced by AT&T and Western Union." *Id.* at 17.

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"The basis for this determination may be briefly summarized as follows:

> "(a) The *MCI* case involved *applications for authorization to engage in private line communications services.* . . .
>
> "(b) The *Specialized Common Carrier* proceedings involved rule making for the determination of basic policies with respect to the *provision of private line service* by all the specialized carriers." Brief of MCI, pp. 36, 37 in Bell Telephone Company of Pennsylvania and AT&T v. F.C.C., 503 F.2d 1250. (Emphasis added.)

"For while it is correct that the Commission's language requires Bell to permit physical connections 'essential' for 'all' of the *private line services which any of the specialized carriers are now or may 'hereafter' be authorized to offer.* . . ." *Id.* at 52. (Emphasis added.)

Application of USTS•

"The Specialized Carrier decision opened up to full competition *all of AT&T's private line services.*" MCI Brief, *AT&T* v. *F.C.C. et al.*, Case No. 74-1953 (April 1975), p. 6. (Emphasis added.)

". . . Contrary to AT&T's contention that the 'express rationale' of the *Specialized Carrier* decision hinged primarily on a guarantee of 'new and different services,' the Commission's principal holding in the case shows that the *Specialized Carrier* policy is one favoring the entry of *new carriers* in *all* private line services." *Id.* at 17.

"The *Specialized Carriers* policy is based on the provision of *all* private line services by *new carriers* . . . ." *Id.* at 19.

"This necessarily meant, of course, that the specialized carriers were to provide *all the private line services of the existing carriers* rather than be confined primarily to new services." *Id.* at 39. (Emphasis added.)

"Thus, since the Commission has considered the possibility of diversion of the whole of the private line market and found that an insufficient reason to bar competitive entry. . . ." *Id.* at 40.

• In Re: United States Transmission Systems, Inc. 48 F.C.C.2d 859 (1974); AT&T v. F.C.C. et al., No. 74-1953 (D.C. Cir. 1975).

Statements of the Commission in FCC Dockets and Court Related Cases Establishing That It Authorized MCI Only To Provide Private Line Services

*Docket No. 16509**

"MCI is offering a service intended primarily for interplant and interoffice communications with unique and specialized characteristics." 18 F.C.C.2d 953 at 960.

"MCI proposes to offer its subscribers limited common carrier microwave radio service, designed to meet the interoffice and interplant communications needs of small businesses." 18 F.C.C.2d 953 (1969).

*Docket No. 18920***

"1. The MCI carriers and others *all propose point-to-point facilities for private line services* including, but not limited, to data transmission." 29 F.C.C.2d 870, 871. (Emphasis added.)

"7. There are also pending applications by 17 MCI associated companies for portions of a proposed nationwide network *to provide specialized private line communications services. . . .*" *Id.* at 874. (Emphasis added.)

"10. According to MCI, the 'real distinction which delineates MCI service from anything provided today by existing common carriers is . . . the manner in which a customer may utilize it in order to provide a customized *intra-company point-to-point communications system* of his own design and capability.' . . . There is,

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* In Re Microwave Communications, Inc., 18 F.C.C.2d 953 (1969), *reconsideration denied,* 21 F.C.C.2d 190 (1970).

** Specialized Common Carrier Services, 29 F.C.C.2d 870 (1971), *reconsideration denied,* 31 F.C.C.2d 1106 (1971); *affirmed* Washington Utilities Transportation Commission v. F.C.C., 513 F.2d 1142 (9th Cir. 1975), *cert. denied,* 44 U.S.L.W. 3206 (Oct. 1975)

MCI says, 'a distinct difference between a public telephone service which is a natural monopoly and a customized communications service offered on a private point-to-point basis.' " *Id.* at 875, 876. (Emphasis added.)

"11. . . . While varying in detail, in general all of these applicants—*like the MCI carriers—propose to provide specialize* [sic] *private line services* tailored to the requirements of the subscriber." *Id.* at 876. (Emphasis added.)

"31. . . . Moreover, the showings in the MCI applications . . . support the view that there is widespread interest in the types of specialized, *private line services* proposed by it and other applicants." *Id.* at 882. (Emphasis added.)

". . . For example, AT&T's present interstate business constitutes only about 30 percent of the Bell System's total business; about 87 percent of the interstate revenue is from message toll telephone and wide area telephone service (WATS), and these later services have an annual growth rate of about 15 percent. *None of the applicants proposes to provide this type of service* and we see no reason to expect any undesirable effects upon these services." *Id.* at 885. (Emphasis added.)

"The MCI carriers and others all *propose point-to-point facilities for private line services* including, but not limited, to data transmission." *Id.* at 871. (Emphasis added.)

"There are also pending applications by 17 MCI associated companies for portions of a proposed nationwide network to *provide specialized private line communications services.*" *Id.* at 874, 875. (Emphasis added.)

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"The Commission's decision in this proceeding to allow competition for the provision of specialized common carrier services by qualified carriers involves essentially *private line offerings as distinguished from local telephone exchange and long distance toll telephone services.* As such the specialized carriers would not directly compete with the basic interstate public telephone system of the United States, which is used largely for voice communications." FCC Brief, p. 4-5 in *Washington Utilities Transportation Commission* v. *F.C.C.*, 513 F.2d 1142 (9th Cir. 1975). (Emphasis added.) (Footnote omitted.)

"Many applicants, such as intervenors MCI, Southern Pacific, Interdata, etc., sought *permission to construct point-to-point microwave facilities solely for the provision of private line communication services. It was made clear that their facilities would not be connected with the interstate telephone network of AT&T, although many applicants would require connection with local telephone companies in order to obtain local distribution* (*i.e.*, from the microwave terminal to a customer's premises)." *Id.* at 8-9. (Emphasis added.)

". . . The new specialized companies are offering business and institutional users a choice of diverse services of stated quality (either higher or lower than that of the telephone company) that is solely for the purpose of meeting the needs of users for specialized communications between or among a given number of points." *Id.* at 43.

"Significantly the specialized service market is but a small fraction of the total communication market, *which is made up principally of the demand for Bell's public telephone service with which the specialized applicants will not compete.*" *Id.* at 50. (Emphasis added.)

Docket No. 16495[•]

"In encouraging multiple only and the development of competition in the supply of domestic communications, *we have maintained a distinction between the so-called monopoly switched telephone services now being furnished by AT&T and all other classes of existing and potential specialized services.*" 35 F.C.C.2d 844, 853. (Emphasis supplied.)

Docket No. 19896[•]

"5. *The specialized common carrier parties provide private line services to their subscribers* and are engaged in the transmission of communications, voice, data, or both, between a point in one state and a point in another state and/or a foreign country, i.e., interstate or foreign communications." 46 F.C.C.2d 413, 416. (Emphasis added.)

"9. In the original MCI case, which was an adjudicatory proceeding involving applications for authorizations to construct facilities *to provide a common carrier private line microwave* radio service between Chicago, Illinois and St. Louis, Missouri . . . ." *Id.* at 419. (Emphasis added.) (Footnote omitted.)

"From the above, as well as from a reading of the entire Notice, it is apparent that, although the Commission made reference to loop service, as Bell asserts, it

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[•] In the Matter of Establishment of Domestic Communications Satellite Facilities by Non-Government Entities, Second Report and Order, 35 F.C.C.2d 844 (1972), Memorandum Opinion and Order, 38 F.C.C.2d 665 (1972).

[•] In the Matter of Bell System Tariff Offerings of Local Distribution Facilities, 46 F.C.C.2d 143 (1974), *affirmed* The Bell Telephone Company of Pennsylvania and AT&T v. F.C.C., 503 F.2d 1250 (3d Cir. 1974), *cert. denied*, 44 U.S.L.W. 3205 (Oct. 1975).

was never intended to limit the scope of the inquiry to loop service. *Rather, a broader inquiry into the local distribution of the interstate private line common carrier services proposed by the new carriers was contemplated.*" *Id.* at 421. (Emphasis added.)

"20. . . . In considering this contention we must first take into account the nature of the MCI and Specialized Common Carrier Services proceedings. In the MCI case the applicant was seeking *authorization to engage in the business of providing interstate private line communications services . . . .*" *Id.* at 424. (Emphasis added.)

"22. . . . In each of the proceedings discussed above, our action was taken to insure that competition in *the provision of interstate private line communications* services would be on a full, fair, and non-discriminatory basis. . . . However, we have held on the basis of extensive hearings in adjudicatory and rule making proceedings that the public will be benefitted by the entry of the specialized carriers into *the private line common carrier field* and that the public interest will be served by competition on a fair and non-discriminatory basis." *Id.* at 426. (Emphasis added.)

Applications of USTS•

"The Commission in 1970 had pending a number of applications for microwave radio facilities, which were to be used for specialized common carrier services in various parts of the country. The applicants proposed to offer a wide range of *private line services. . . . They did not propose to offer ordinary long distance service or wide area telephone service* (WATS)." FCC Brief,

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• In Re: United States Transmission Systems, Inc., 48 F.C.C. 859 1974); AT&T v. F.C.C. et al., No. 74-1953 (D.C. Cir. 1975).

AT&T v. *F.C.C. et al.*, Case No. 74-1953 (April 23, 1975), pp. 3-4. (Emphasis added.)

"The open entry policy covered the full range of private line services. . . ." *Id.* at 7.

". . . The Court interpreted the Commission's policy broadly as approving open entry into the entire field of private line services. . . ." *Id.* at 8.

". . . But it was evident from the beginning that the Commission was opening the full range of private line services to competition." *Id.* at 21.

"Similarly, the Eastern District of Pennsylvania in *MCI Communications Corp.* v. *AT&T*, 369 F. Supp. 1004, 1027-28, concluded that the Commission's decision in *Specialized Common Carrier Services* 'was to permit competition in all private line services.' . . . The Court, earlier in the opinion, had defined specialized common carrier service as . . . *synonymous with leased line services, as distinguished from public exchange and long distance service.*" *Id.* at 21-22. (Emphasis added.) (Footnote omitted.)

Third Circuit Quotations Establishing That MCI Was Granted Authority To Only Provide Private Line Service

". . . Specifically, the first two paragraphs of the order (¶ 53-54) require the American Telephone and Telegraph Company and affiliated Bell System companies (hereinafter "A T & T") to furnish to MCI Telecommunications Corp. (MCI) and to all other specialized common carriers the interconnection facilities necessary to provide *private line services.*" 503 F.2d 1250, 1254. (Emphasis added.)

". . . The Commission first considered *the provision of private line services by specialized common carriers* in *In re Applications of Microwave Communications,*

Inc., 18 F.C.C.2d 953 (1969) (Docket No. 16509), *reconsideration denied*, 21 F.C.C.2d 190 (1970). . . . Less than two years later, the FCC conducted a full-scale investigation into the provision of private line services." *Id.* at 1254-55. (Emphasis added.)

". . . In short, before reaching the issue of local distribution (issue "E"), the Commission proposed to consider a more general topic: entry of new carriers into the private line service field." *Id.* at 1260.

". . . Implicit in the FCC's evaluation is the assumption that the new entrants will provide services similar to those provided by the established carriers within the rubric of 'private line services.' " *Id.* at 1260-61.

". . . As we have previously discussed, the Commission focused upon the *full field* of private line services theretofore provided by the established carriers. The Commission's evaluation demonstrated that the public interest favored the entry of specialized carriers into the full field of *private line services.*" *Id.* at 1270. (Emphasis added.)

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"The Commission's efforts to *improve private line services by permitting specialized carriers to enter the market* helped generate the controversy presently before this court." Brief of FCC, p. 8, filed in *Bell Telephone Company of Pennsylvania and AT&T* v. *F.C.C.*, 503 F.2d 1250. (Emphasis added.)

"While MCI's initial application was in protracted hearings, numerous applications were filed with the Commission by specialized common carriers also seeking to enter the private line communications field." *Id.* at 11.

". . . Thereafter the Commission concluded that the public would not be harmed even assuming that AT&T lost all its private line services. . . ." *Id.* at 13.

"After an extensive rulemaking proceeding into the broad question of *competition in private line services* . . . . *Id.* at 27. (Emphasis added.)

". . . New obligations might be created for existing carriers as well as for the applicants, and the long-standing policy of permitting monopoly provision of private line communication service was challenged." *Id.* at 32.

". . . For purposes of this proceeding, we submit that the proper dichotomy is between private line services and the basic interstate public telephone system. . . ." *Id.* at 40.

"Throughout the various proceedings concerning the specialized common carriers, it was clear that the Commission was contemplating the entire range of private line services." *Id.* at 41.

"The *Specialized Common Carrier Services* proceeding involved rulemaking for the determination of basic, broad policies with respect to provision of the full range of private line services. . . ." *Id.* at 41, 42.

". . . The Commission has tried to insure that competition in the provision of interstate private line services will be on a full, fair, and non-discriminatory basis. . . ." *Id.* at 45.

"In summary, throughout this entire tripartite proceeding (MCI; Specialized Common Carriers; AT&T Tariff Offerings), the Commission has been considering the question of competition over the full range of private line common carrier services." *Id.* at 48. (Emphasis added.)

Ninth Circuit Quotations Establishing That MCI Was Granted Authority To Only Provide Private Line Service

". . . The business involved is that of *providing specialized private or leased line communication services* through microwave transmission facilities, *as distinguished from public exchange and long distance toll telephone service.* The latter consists primarily of voice communication service from and to all points on an integrated national and international telephone network, available to the public generally. The proposed service consists of communication of all types of signals, including data and other non-voice traffic, *but only to or from limited points, and only pursuant to private contract.*" *Washington Utilities and Transportation Commission* v. *F.C.C.*, 513 F.2d 1142, 1155 (1975), *cert. denied* 44 U.S.L.W. 3205 (Oct. 1975).

". . . New entry in the specialized field would not adversely affect the furnishing of services to the public by existing carriers. The specialized communications services involved constitute only a small percentage of A.T.&T.'s total market. *The service for standard voice communications services is not affected;* it accounts for the bulk of A.T.&T.'s revenue." *Id.* at 1156 n. 21 (characterizing the views of the Commission, as detailed in its report under review). (Emphasis added.)

". . . The record as a whole indicates that entry by more than one "*private line carrier*" should generally be reasonably feasible, in view of the large and heterogeneous potential market." *Id.* at 1167 n. 33. (Emphasis added.)